PUBLIC MATTER – NOT DESIGNATED FOR PUBLICATION

Filed November 1, 2007

REVIEW DEPARTMENT OF THE STATE BAR COURT

In the Matter of **WILLIAM MICHAEL McCANN**, A Member of the State Bar.	)	**05-O-00119** **OPINION ON REVIEW**

Respondent William Michael McCann was found culpable of forgery, failure to keep clients reasonably informed of significant developments, and making misrepresentations to a State Bar investigator. The hearing judge determined that mitigating circumstances outweighed the aggravating circumstances and recommended a one-year suspension, stayed, and two years' probation on conditions including restitution, with no actual suspension.

The State Bar alleges error as to some of the hearing judge's culpability determinations, mitigating and aggravating circumstances, and the discipline recommendation, asserting that the appropriate discipline should include three months' actual suspension.

The parties entered into a Stipulation as to Facts and Admission of Documents on January 30, 2006, prior to trial. Upon our independent review of the record (Rules Proc. of State Bar, rule 305(a); *In re Morse* (1995) 11 Cal.4th 184, 207), we adopt the hearing judge's findings but find additional aggravation, and we increase the recommendation regarding discipline to include a 60-day actual suspension.

BACKGROUND AND FINDINGS OF FACT

Respondent was admitted to the State Bar of California on December 18, 1975, and he has no prior record of discipline.

The Viray Matter

On October 25, 2003, Alexandria Viray (Alexandria), a minor, was injured in a traffic accident. Her parents, Liz Viray and Edwin Longboy, retained the offices of McCann & Logue to represent Alexandria. Blue Cross of California (Blue Cross) paid her medical benefits through an ERISA-qualified plan and hired The Rawlings Company (Rawlings) to obtain reimbursement for those benefits provided to Alexandria.

On March 18, 2004, Rawlings sent respondent a "Notice of ERISA Claim/Lien" (first notice) which provided in essence that the claim/lien applied "to any amount now due or which may . . . become payable out of recovery . . . collected (or to be collected), whether by judgment, settlement, or compromise . . . . No settlement of the tort claim . . . should be made prior to notifying our office of the potential settlement . . . . [¶] We are notifying all involved parties of [Blue Cross's] claim/lien . . . . [¶] **Please acknowledge receipt of this notice by completing the enclosed information form and returning it to me as soon as possible . . . .**" Respondent did not respond to the first notice based on his prior experience that Blue Cross very rarely pursued similar claims. He also relied on his reading of existing law[1] that Blue Cross did not have a valid medical lien against any recovery. Respondent informed his clients about the potential Blue Cross liens before he received the first notice. He then told the clients during settlement discussions in May 2004 that he had received the first notice.

On May 27, 2004, Alexandria's case settled for $4,500. On June 3, 2004, the settlement check was issued to "Liz Viray as Legal Guardian of Alexandria Viray, the Law Offices of McCann & Logue and Rawlings & Company for Blue Cross of CA." Knowing his clients were anxious to receive their money, and knowing that the insurance company could take weeks or even months to process the check, respondent endorsed the settlement check on June 8, 2004 on

[1]In his brief on review, respondent cites to *FMC Medical Plan v. Owens* (9th Cir. 1997) 122 F.3d 1258, *Reynolds Metals Co. v. Ellis* (9th Cir. 2000) 202 F.3d 1246, and *Great-West Life & Annuity Ins. Co. v. Knudson* (2002) 534 U.S. 204 in support of this assertion.

behalf of "Rawlings & Company for Blue Cross of CA" without the knowledge or consent of either Rawlings or Blue Cross. He advised his clients to refer Rawlings or Blue Cross to him if they were contacted. Respondent testified that he took a risk, which he concedes was a mistake.

On June 11, 2004, Rawlings sent a "Second Notice of ERISA Lien/Claim" (second notice) to respondent. Respondent did not contact Rawlings as to either the second notice or the settlement. By letter to respondent dated September 17, 2004, Rawlings inquired about the settlement check. In late September, a Rawlings representative called respondent about the check, and respondent told that person that he had "implied authority" to sign the settlement check.

Linda Magruder, associate general counsel for Rawlings, filed a State Bar complaint on November 29, 2004. After respondent received a written inquiry about the matter from the State Bar, he made numerous attempts to negotiate a resolution with Rawlings. He first offered to pay two-thirds of the amount of the lien claim, and then in July 2005 he sent Rawlings a check for the full amount, which was returned. Respondent was advised by Rawlings to resolve the matter with the State Bar. In November 2005, respondent informed his clients of the Rawlings situation.

State Bar Investigation

On January 19, 2005, Willis Shalita (Shalita), a State Bar investigator, sent respondent a letter of inquiry about the Viray matter, requesting a written response. Shalita also spoke to respondent by telephone, at which time he was assured that respondent would take care of the lien claim. On February 3, 2005, Shalita again wrote to respondent about the Viray matter. He and respondent had another telephone discussion on February 9, 2005, during which respondent expressed his belief that the matter had been resolved since he had offered Rawlings the full reimbursement amount. As to the endorsement on the check, respondent told Shalita that he had "verbal authorization." On February 15, 2005, respondent sent Shalita a written response, stating in part that "There is no written proof that Rawlings & Co gave this firm authority to negotiate

the check" while implying that the authorization had been verbal. Respondent characterized his statements to Shalita as "sophistry" intended to "snow" him in an effort to advance respondent's interests.

Culpability

Count One - Forgery - Section 6106[2]

The hearing judge found respondent culpable of violating section 6106 – conduct involving moral turpitude and dishonesty – by endorsing the settlement check on behalf of Rawlings without its knowledge and consent. We agree.

Count Two - Concealment - Section 6106

The State Bar alleged in Count Two of the First Amended Notice of Disciplinary Charges that respondent committed acts of moral turpitude by intentionally concealing, or at the least concealing by gross negligence, material information from his clients. Respondent testified, and we find, that he wanted to insulate his clients from his actions and planned to handle the matter himself without his clients' involvement. "Respondent's belief in the justifiability of his actions [failure to inform his clients] was not only mistaken, but unreasonable; however, it was honestly held." (*In the Matter of Klein* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 1, 11.) We therefore agree with the hearing judge that respondent did not commit acts involving moral turpitude, dishonesty, or corruption within the meaning of section 6106. (See *id*. at pp. 10-11; *Sternlieb v. State Bar* (1990) 52 Cal.3d 317, 321, 332.) We accordingly adopt the hearing judge's dismissal of count two with prejudice.

Count Three - Failure to Keep Client Reasonably Informed – Section 6068, Subdivision (m)

The hearing judge concluded that respondent failed to timely inform his clients of the lien notices, his communications with Rawlings, and his unauthorized endorsement of the settlement check, in willful violation of section 6068, subdivision (m). We agree. As set forth in the

[2]This and all further references to section(s) are to the Business and Professions Code unless otherwise noted.

findings of fact above, respondent did not inform his clients of the first lien notice until the parties were involved in settlement discussions, which occurred about two months after he had received the lien claim. Moreover, respondent informed his clients in November 2005 of the unauthorized endorsement of the check and his communications with Rawlings only after he was unable to resolve the matter with Rawlings.

Count Four - Misrepresentation - Section 6106

Respondent intentionally misled Shalita, in violation of section 6106, by representing that he had "verbal authorization" to endorse the check when he knew he did not, and by asserting that it was his impression that the Rawlings matter had been resolved and the complaint would be withdrawn, which he knew to be untrue. We agree with the hearing judge's conclusion that respondent's statements to Shalita constituted conduct involving moral turpitude.

Mitigation

In mitigation, the hearing judge gave significant weight to respondent's thirty years of practice without any disciplinary proceedings. (*In the Matter of Maloney and Virsik* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 774, 789; std. 1.2(e)(i).)[3] We too give this mitigating factor significant weight. We note that this is a single client matter involving a lien of $831.85, which respondent sought to pay. His clients received their portion of the settlement immediately after respondent received it. In light of these facts and respondent's long history of discipline-free practice, we find that the misconduct was aberrational and unlikely to recur.

The hearing judge also determined that respondent acted in good faith, based on his honest and reasonable belief that the lien was invalid, citing *In the Matter of Rose* (Review Dept. 1997) 3 Cal. State Bar Ct. Rptr. 646, 653; std. 1.2(e)(ii).) We disagree. Although respondent honestly believed that the lien was invalid, this does not justify committing an act of moral turpitude, i.e., forgery. Respondent knew that under any circumstance he was not authorized to sign the check on behalf of Rawlings without its knowledge and consent. Nevertheless, he

[3]This and all further references to standard(s) herein are to Rules of Procedure of the State Bar, title IV, Standards for Attorney Sanctions for Professional Misconduct.

consciously took the risk and forged Rawlings' name in order to get the money to his impoverished clients quickly. While he may have had good *intentions* in so doing, this does not establish his good faith in mitigating his culpability for dishonesty under section 6106. (Cf. *Hallinan v. State Bar* (1948) 33 Cal.2d 246, 249, wherein the Supreme Court considered in mitigation Hallinan's good faith belief that he was authorized to sign a settlement document on behalf of his client because of the broad power of attorney granted to him by the client.)

Respondent was also given some weight in mitigation for his marital problems and emotional difficulties. In May or June 2004, respondent and his spouse of 30 years separated, leaving respondent responsible for the primary care of his disabled, adult daughter. (Std. 1.2(e)(iv).) However, as sympathetic as we may be, we give little weight to respondent's marital problems since no expert testimony was provided to establish that his emotional difficulties were directly related to his misconduct. (*Porter v. State Bar* (1990) 52 Cal.3d 518, 527.)

The hearing judge also determined that respondent demonstrated candor and cooperation with the State Bar. (Std. 1.2(e)(v).) He entered into a stipulation of facts and admission of documents, thus saving the State Bar the time and expense of calling witnesses. The State Bar asserts that, due to respondent's initial lack of honesty with the State Bar investigator, he should be given no credit for his later candor and cooperation. It also argues that respondent's stipulation encompassed only easily provable facts. We disagree with this assertion as respondent stipulated to all material facts necessary to establish culpability. But we nonetheless conclude that respondent should not be accorded mitigating credit for candor because he first attempted to mislead Shalita in his investigation. However, given that the State Bar was assisted in proving culpability due to the stipulated facts, we conclude that respondent is entitled to mitigation for cooperation with the State Bar.

Respondent presented one character witness, his law partner Michael Logue, who attested to respondent's competence in personal injury matters and declared that respondent is the best lawyer he knows. He also stated that he is aware of the Ninth Circuit ruling regarding the invalidity of ERISA claims in reference to third-party claimants. We determine that no weight

should be given to respondent's character witness since his testimony did not constitute an extraordinary demonstration of good character attested to by a wide range of references in the legal and general communities. (Std. 1.2(e)(vi); *In the Matter of Respondent K* (Review Dept. 1993) 2 Cal. State Bar Ct. Rptr. 335, 359; *In the Matter of Potack* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 525, 538-539.)

In further mitigation, the hearing judge determined that respondent demonstrated remorse and recognition of wrongdoing. (Std.1.2(e)(vii).) The hearing judge found that respondent readily admitted that he was wrong and tried to resolve the matter with Rawlings, albeit not until after the involvement of the State Bar. Respondent realized that his act of forgery was a mistake and conceded that he had attempted to mislead the State Bar investigator, thus showing that he understood the wrongfulness of his acts. The hearing judge found respondent to be credible and his testimony forthright. We give great weight to the credibility and candor determinations made by the hearing judge, who observed the witnesses and heard their testimony. (Rules Proc. of State Bar, rule 305(a) [review department gives great weight to hearing judge's findings resolving issues of credibility]; *Franklin v. State Bar* (1986) 41 Cal.3d 700, 708.) We therefore adopt the hearing judge's determination that respondent has demonstrated remorse and recognition of wrongdoing.

Aggravation

In aggravation, the hearing judge found multiple acts of misconduct. (Std. 1.2(b)(ii).) We adopt this finding. The State Bar urges two additional aggravating factors: that respondent's conduct was surrounded by bad faith (std. 1.2(b)(iii)); and that he has shown a lack of insight into his wrongdoing (std. 1.2(b)(v)). We disagree with the assertion that the conduct was surrounded by bad faith. As previously stated, although respondent committed forgery in his representation of his clients, he did so in at least an initial effort to act in their interests. Although there was certainly no good faith in his misrepresentations to the State Bar investigator, finding aggravation based on the misconduct that has already been found as a basis for culpability would be duplicative. (*In the Matter of Dale* (Review Dept. 2005) 4 Cal. State Bar Ct. Rptr. 798, 811.)

Although respondent's initial reaction to the forgery allegation was to compound his error by making further misrepresentations to cover his misconduct, nevertheless, respondent readily admitted at trial the wrongfulness of forging the signature on the check and of lying to the State Bar investigator. In addition, we find respondent's continued insistence that there was no moral turpitude attached to his conduct because the lien was invalid to be more a misunderstanding of the meaning of the term moral turpitude and the conduct encompassed within that term rather than a lack of understanding of the wrongful nature of his conduct.

We also find in further aggravation that respondent displayed a lack of candor to Rawlings. (Std. 1.2(b)(vi).)

LEVEL OF DISCIPLINE

The State Bar argues that the hearing judge's recommendation of probation with no actual suspension is insufficient under the applicable standards and case law. Respondent contends that decisional law supports the recommended discipline. In considering their arguments, we bear in mind that the purposes of attorney discipline are the protection of the public, the preservation of confidence in the legal profession, and the maintenance of the highest professional standards for attorneys. (*Chadwick v. State Bar* (1989) 49 Cal.3d 103, 111; std. 1.3.)

The gravamen of this case is respondent's act of signing the settlement check on behalf of Rawlings without its knowledge or consent and then misleading a State Bar investigator. It is immaterial whether the lien claim was invalid or not, that there was no harm to the client, that respondent acted out of perceived necessity for the sake of his clients, that there was no harm to the carrier, or that Blue Cross had rarely pursued similar claims in the past. None of these reasons is justification for or a defense of the act of forgery. The Supreme Court has "stated on a number of occasions that deceit by an attorney is reprehensible misconduct whether or not harm results and without regard to any motive for personal gain. [Citations.]" (*Codiga v. State Bar* (1978) 20 Cal.3d 788, 793.) We note that " 'The most common definition of an act of moral turpitude is one that is "contrary to honesty and good morals." [Citations.]' [Citation.]" (*In re*

Scott (1991) 52 Cal.3d 968, 978.) Dishonest acts by an attorney are grounds for suspension or disbarment even if no harm results. (*Levin v. State Bar* (1989) 47 Cal.3d 1140, 1147.)

Here, respondent was also found to have failed to keep his clients informed of significant developments. In aggravation, he committed multiple acts of misconduct and displayed a lack of candor to Rawlings. In mitigation, respondent had no prior discipline in nearly 30 years of practice at the time of his misconduct, he tried to shield his clients from the consequences of his actions, he cooperated with the State Bar by entering into a stipulation as to facts prior to trial, and he demonstrated remorse and recognition of wrongdoing. He also is entitled to limited mitigation due to his family problems during the time of the misconduct.

In determining the appropriate level of discipline, we give great weight to the standards (*In re Silverton* (2005) 36 Cal.4th 81, 92), though we are not bound to follow the standards in talismanic fashion or from a fixed formula. " 'In deciding what discipline is warranted, each case must be decided on its own facts.' [Citation.]" (*Connor v. State Bar* (1990) 50 Cal.3d 1047, 1059.)

Standard 2.3 is applicable in this case, providing that "Culpability of a member of an act of moral turpitude, fraud, or intentional dishonesty toward a court, client or another person . . . shall result in actual suspension or disbarment depending upon the extent to which the victim of the misconduct is harmed or misled and *depending upon the magnitude of the act of misconduct and the degree to which it relates to the member's acts within the practice of law.*" (Italics added.) In this proceeding, respondent's misconduct directly relates to his practice of law. He committed acts of moral turpitude in forging the settlement check and making misrepresentations to the State Bar investigator.

Standard 2.6 also applies, providing that a violation of section 6068, subdivision (m) "shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline . . . ." Although the section 6068, subdivision (m) violation is dwarfed by the acts of moral turpitude, we nevertheless consider it in the overall discipline recommendation.

The hearing judge and respondent rely on *Palomo v. State Bar* (1984) 36 Cal.3d 785 (*Palomo*) and *In the Matter of Jeffers* (Review Dept. 1994) 3 Cal. State Bar Ct. Rptr. 211 (*Jeffers*) to support the lack of actual suspension in the recommended discipline.

In *Palomo*, the attorney endorsed his client's name on a check made payable to the client, without the client's knowledge or consent; deposited it in his payroll account rather than a trust account; failed to notify the client promptly of the receipt of funds and/or to pay out the funds to the client; and misappropriated the funds. The Supreme Court found lax financial procedures in Palomo's records of client funds and a prior discipline of a public reproval but determined that there was no specific intent to defraud his client and that restitution was made before State Bar involvement. Palomo was suspended for one year, stayed, and given a one-year probationary term.

We agree with the hearing judge that *Palomo* presents somewhat greater misconduct, in that Palomo committed two acts of moral turpitude (forging a signature on a check and misappropriating client funds), as well as two additional acts of misconduct. Palomo presented evidence of strong mitigation, as did respondent, who has had a long practice without discipline. In addition, respondent's misconduct was surrounded by good faith, he cooperated with the State Bar by entering into a stipulation as to facts prior to trial, and he has demonstrated remorse and recognition of wrongdoing. While respondent's aggravation consisting of multiple acts of misconduct and a lack of candor to Rawlings is serious, so was Palomo's aggravation of a prior record of discipline.

In *Jeffers*, the attorney represented the conservator for Lowell Craddock. Craddock was involved in a personal injury case but had suffered a stroke. In the course of representing the conservator and appearing in the personal injury case, Jeffers failed to appear at a mandatory settlement conference and intentionally misled the judge by concealing a material fact (i.e., that Craddock was deceased), an act involving moral turpitude. We found no aggravating factors but gave mitigating credit for the unblemished practice of law for over 30 years without discipline

prior to a disciplinary matter in Wisconsin.[4] We also gave limited weight to Jeffers's good character witnesses but gave him credit for his community service and pro bono activities. In view of the lack of aggravation coupled with the mitigating factors, we recommended a one-year stayed suspension, two years' probation and no actual suspension.

Unlike the attorney in *Jeffers*, respondent was found culpable of moral turpitude due to the forgery and the misleading statements to the State Bar investigator. In addition, he failed to keep his clients informed of significant developments in their case. While respondent had more factors in aggravation than in *Jeffers*, he also had more factors in mitigation.

The State Bar directs our attention to *In the Matter of Dahlz* (Review Dept. 2001) 4 Cal. State Bar Ct. Rptr. 269 (*Dahlz*) and *Olguin v. State Bar* (1980) 28 Cal.3d 195 (*Olguin*).

In *Dahlz*, in a single client matter, the attorney failed to perform competently the legal services for which he was retained, failed to respond to a client's reasonable status inquiry, improperly withdrew from representation without taking steps to avoid reasonably foreseeable prejudice to the rights of the client, and committed conduct involving moral turpitude (i.e., making misrepresentations to opposing counsel). In aggravation, Dahlz had one prior record of discipline (though the current misconduct occurred in part prior to the imposition of earlier discipline), lied to the State Bar investigator and to the State Bar Court in his presentation of testimony and exhibits, committed multiple acts of misconduct, and harmed his client. Dahlz was given only slight mitigating credit for some pro bono and community service. We recommended that Dahlz be placed on probation for four years on various conditions, including that he be actually suspended for one year.

In *Olguin*, the attorney failed to use reasonable diligence to provide his client with status reports and to promptly respond to inquiries from substitute counsel. He also made misleading statements to the State Bar's investigator and provided the State Bar with false documents in an

[4]We did not consider the Wisconsin discipline in aggravation due to our inability "to examine the nature or chronology of [the] Wisconsin conduct based on the current record." (*Jeffers*, *supra*, 3 Cal. State Bar Ct. Rptr. at p. 224.)

attempt to avoid discipline. Although his office staff fabricated the documents, initially without his knowledge, he continued to assert their authenticity after he learned their true nature. Olguin had previously suffered a private reproval as a result of an earlier conviction due to a false representation under oath that he was a United States citizen. The Supreme Court noted "that fraudulent and contrived misrepresentation to the State Bar may constitute perhaps a greater offense than misappropriation" (*id*. at p. 200), and taking into consideration the attorney's prior disciplinary action, imposed six months' actual suspension.

Dahlz is more serious than the instant case in that there was somewhat more misconduct, more serious aggravation due to the prior discipline and harm to a client, and much less mitigation. Although the misconduct and aggravation in the present case is roughly similar in gravity to that in *Olguin*, respondent presented much greater mitigation than Olguin did.

We find the case of *Hallinan v. State Bar*, *supra*, 33 Cal.2d 246, to be instructive. Hallinan settled a claim for $40,000, and upon receipt of the check, endorsed his client's name on the check, the release, and the dismissals, and disbursed the funds. He had the signature on the release notarized as that of the client. Hallinan was well aware that opposing counsel wanted the personal signature of the client on the release and dismissals and that he wanted them to be acknowledged by a notary public. Opposing counsel believed the notarized signature on the release to be the client's personal signature. Hallinan believed he had the legal authority to sign his client's name based on a broad power of attorney. The Supreme Court found that Hallinan practiced a deception on opposing counsel and held that his conduct could not be condoned. The court determined, however, that Hallinan was acting in good faith in the belief that he was legally authorized to execute the papers and that there was no harm to the client or to opposing counsel,[5] and imposed a three-month suspension. In this case, while respondent believed that the lien claim was invalid, his act of endorsing the check without authorization cannot be condoned.

[5]Opposing counsel paid $5,000 to obtain a release signed by the client to prevent future litigation, and Hallinan offered to reimburse opposing counsel for his expenditure.

We are also guided by *In the Matter of Mitchell* (Review Dept. 1991)1 Cal. State Bar Ct. Rptr. 332 in which Mitchell prepared a resume that included false information as to his educational background. The resume was redone by an employment service with additional inaccurate educational information, but Mitchell failed to correct the errors at an employment interview. In aggravation, he committed multiple acts of misconduct, the misconduct was surrounded by dishonesty, and he made misrepresentations to the State Bar during discovery. In mitigation, little weight was given both to his lack of prior discipline because he had been in practice only approximately five years before the misconduct began and to his good character evidence because it consisted only of a letter from one witness. Some weight was given to Mitchell's family problems, even though no expert established that those problems were directly responsible for his misconduct. Mitchell testified that he did not intend to deceive anyone but was merely attempting to obtain an interview, at which time he would inform the employer of the truth; however, he failed to do so. Based on the misrepresentations in his resume and to the State Bar, as well as our determination that "any act of dishonesty by an attorney is an act of moral turpitude, and ground for serious professional misconduct," we determined that an actual suspension of 60 days was warranted. (*Id.* at p. 341.)

This case sits uniquely within the range suggested by the cases we have discussed *ante*. At one end of the continuum of discipline is *Palomo* and other cases where no actual suspension was imposed, and at the other end is *Hallinan* in which 90 days' actual suspension was imposed as well as cases cited by the State Bar resulting in a year of actual suspension. Respondent committed two serious offenses of deceit and, before committing the second, had the opportunity to reflect upon the first. However, he has no prior record of discipline in 30 years of practice and was motivated initially by his desire to conclude the case for the benefit of his clients. Balancing all relevant considerations (e.g., *Gary v. State Bar* (1988) 44 Cal.3d 820, 828), we recommend a 60-day actual suspension as part of a larger stayed suspension as the appropriate discipline in this case.

RECOMMENDED DISCIPLINE

For the reasons above, we recommend that the Supreme Court order that respondent William Michael McCann be suspended from the practice of law in the State of California for one year; that execution of this suspension be stayed; and that he be placed on probation for one year on the following conditions:

1. That respondent be actually suspended from the practice of law during the first 60 days of probation.

2. Respondent must comply with the provisions of the State Bar Act, the Rules of Professional Conduct, and all conditions of this probation.

3. Respondent must maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current office address and telephone number or, *if no office is maintained*, an address to be used for State Bar purposes. (Bus. & Prof. Code, § 6002.1, subd. (a).) Respondent must also maintain, with the State Bar's Membership Records Office *and* the State Bar's Office of Probation in Los Angeles, his current home address and telephone number. (See Bus. & Prof. Code, 6002.1, subd. (a)(5).) Respondent's home address and telephone number will *not* be made available to the general public. (Bus. & Prof. Code, 6002.1, subd. (d).) Respondent must notify the Membership Records Office and the Office of Probation of any change in any of this information no later than 10 days after the change.

4. Respondent must report, in writing, to the State Bar's Office of Probation in Los Angeles no later than January 10, April 10, July 10 and October 10 of each year or part thereof in which respondent is on probation (reporting dates). However, if respondent's probation begins less than 30 days before a reporting date, respondent may submit the first report no later than the second reporting date after the beginning of his probation. In each report, respondent must state that it covers the preceding calendar quarter or applicable portion thereof and certify by affidavit or under penalty of perjury under the laws of the State of California as follows:

   (a) in the first report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation since the beginning of probation; and

   (b) in each subsequent report, whether respondent has complied with all the provisions of the State Bar Act, the Rules of Professional Conduct, and all other conditions of probation during that period.

   During the last 20 days of this probation, respondent must submit a final report covering any period of probation remaining after and not covered by the last quarterly report required under this probation condition. In this final report, respondent must certify to the matters set forth in subparagraph (b) of this probation condition by affidavit or under penalty of perjury under the laws of the State of California.

5. Subject to the proper or good faith assertion of any applicable privilege, respondent must fully, promptly, and truthfully answer any inquiries of the State Bar's Office of Probation

that are directed to respondent, whether orally or in writing, relating to whether respondent is complying or has complied with the conditions of this probation.

6. Within one year after the effective date of the Supreme Court order in this matter, respondent must attend and satisfactorily complete the State Bar's Ethics School and provide satisfactory proof of such completion to the State Bar's Office of Probation in Los Angeles. This condition of probation is separate and apart from respondent's California Minimum Continuing Legal Education (MCLE) requirements; accordingly, respondent is ordered not to claim any MCLE credit for attending and completing this course. (Accord, Rules Proc. of State Bar, rule 3201.)

7. Respondent's probation will commence on the effective date of the Supreme Court order imposing discipline in this matter. And, at the end of the probationary term, if respondent has complied with the conditions of probation, the Supreme Court order suspending respondent from the practice of law for one year will be satisfied, and the suspension will be terminated.

PROFESSIONAL RESPONSIBILITY EXAMINATION

We further recommend that respondent be ordered to take and pass the Multistate Professional Responsibility Examination administered by the National Conference of Bar Examiners within one year after the effective date of the Supreme Court order in this matter and to provide satisfactory proof of such passage to the State Bar's Office of Probation in Los Angeles within the same period.

COSTS

We further recommend that the costs incurred by the State Bar in this matter be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable as provided in Business and Professions Code section 6140.7 and as a money judgment.

WATAI, Acting P. J.

We concur:

EPSTEIN, J.

STOVITZ, J.*

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*Retired Presiding Judge of the State Bar Court, sitting by designation of the Presiding Judge.